

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Jose Water Company (U168W) for an Order authorizing it to increase rates charged for water service by \$47,394,000 or 21.51% in 2013, by \$12,963,000 or 4.87% in 2014, and by \$34,797,000 or 12.59% in 2015.

Application 12-01-003
(Filed January 3, 2012)

DECISION ADOPTING SETTLEMENT OF SAN JOSE WATER COMPANY AND THE OFFICE OF RATEPAYER ADVOCATES ON ONE REHEARING ISSUE**Summary**

By this decision, the Commission approves the settlement between San Jose Water Company and the Office of Ratepayer Advocates, regarding the Non-Tariffed Products and Services (NTP&S) issue returned on rehearing by Decision 15-03-048. Pursuant to the settlement, \$286,000 per year represents the amount of incremented NTP&S labor that should be credited to Test Year 2013 Total Payout expense for costs. No change in the currently authorized revenue requirement is necessary. This proceeding is closed.

1. Background

On August 15, 2014, the Commission issued Decision (D.)14-08-006, which resolved San Jose Water Company's (SJWC) Test Year 2013 General Rate Case (GRC), in Application (A.) 12-01-003, and closed the proceeding. On September 15, 2014, SJWC filed an Application for Rehearing of D.14-08-006. On March 27, 2015, the Commission issued D.15-03-048, which granted limited rehearing of a single issue decided in D.14-08-006, what is the appropriate

treatment of labor expense related to non-tariffed products and services (NTP&S). On April 24, 2015, SJWC filed and served both public and confidential versions of its Compliance Filing Pursuant to Ordering Paragraph (OP) 2 of D. 15-03-048, as directed by that decision.

On May 18, 2015, a prehearing conference (PHC) was held, and attended by Office of Ratepayer Advocates (ORA) and SJWC. At the PHC, the assigned Administrative Law Judge (ALJ) discussed the scope and schedule for the proceeding, including due dates for service of testimony, holding of evidentiary hearings (EHs), and filing of briefs. On June 19, 2015, the Assigned Commissioner's Scoping Memo and Ruling on Rehearing (Scoping Memo), memorialized the procedural schedule and the scope of rehearing.

We affirm all assigned Commissioner and ALJ rulings herein.

2. Issue for Rehearing

By OP 1 of D.15-03-048, the Commission returned one issue regarding NTP&S for rehearing, stating "Limited rehearing of D.14-08-006 is granted to determine what portion, if any, of labor costs associated with providing non-tariffed products and services is related to excess or unused capacity or whether this labor is needed for regulated operations. If the labor used to provide NTP&S is needed to provide regulated service, the rehearing will consider whether SJWC's provision of NTP&S is in compliance with the Commission's NTP&S rules."

3. Settlement Agreement

3.1. Process

SJWC and ORA (the Joint Parties) held settlement discussions on the issue of NTP&S-related labor expense in SJWC's revenue requirement from early June 2015, through August 12, 2015. Joint Parties also exchanged settlement documents during this period, and ultimately resolved the rehearing issue. The

Six Mutuals¹ participated in the formally noticed settlement conference, held on May 12, 2015, but is not a signatory to the Settlement Agreement.

In accordance with Rule 12.1 of the Rules of Practice and Procedure (Rules), on August 13, 2015, SJWC and ORA filed a *Joint Motion of the Office of Ratepayer Advocates and San Jose Water Company for Approval of Settlement Agreement and to Take Scheduled Dates Off Calendar* (Joint Motion). The Settlement Agreement that was entered into and executed by the Settling Parties on August 12, 2015, is attached to the Joint Motion.

On August 13, 2015, the assigned ALJ issued an e-mail ruling, granting, in part, the Joint Motion, as it regards taking EH dates and brief due dates off the calendar. The balance of the Joint Motion, regarding whether the Settlement Agreement should be adopted, is addressed herein.

3.2. Overview

The proposed Settlement Agreement, which resolves the one scoped issue for rehearing, is signed by two of the three parties, SJWC and ORA (Joint Parties). The other party in this proceeding, the Six Mutual Water Companies, did not participate in the Settlement Agreement. Rather than summarize every term of the Settlement Agreement attached to the Joint Motion, the key portions of the Settlement Agreement are summarized below.

The Joint Parties have agreed that for the purposes of this settlement, that the annual amount of \$286,000 represents a reasonable estimate of the amount of incremental NTP&S labor that should be credited to Test Year 2013 Total Payroll

¹ The six mutual water companies (Six Mutuals) are Big Redwood Park Mutual Water Company, Brush & Old Well Rd Mutual Water Company, Mountain Summit Mutual Water Company, Oakmont Mutual Water Company, Ridge Mutual Water Company, and Villa Del Monte Mutual Water Company.

expense forecasts. As this credit amount is consistent with ORA's original estimate, as adopted in D.14-08-061, no change to currently authorized revenue requirement is necessary. This settlement is not considered precedential and both SJWC and ORA maintain the right to recommend alternative estimating methodologies by which to estimate NTP&S labor in future GRCs.

3.3. Standard of Review for Settlement Agreement

We review this settlement pursuant to Rule 12.1(d), which provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.” We find the Settlement Agreement meets the Rule 12.1(d) criteria, and discuss each of the three criteria below.

3.4. Settlement Agreement is Reasonable in Light of the Whole Record

The Settlement Agreement is signed by two of the three active parties to this proceeding. SJWC and ORA reached a Settlement Agreement after good faith discussions, negotiations, and considerations of proposals to resolve the issue. The Joint Parties represent a broad array of affected interests. The record also shows that the Settlement Agreement was reached after substantial give-and-take between the parties which occurred during settlement conferences. This give-and-take is demonstrated by the positions initially taken by parties and the final positions agreed upon in the Settlement Agreement. The Settlement Agreement thus represents a reasonable resolution of the contested issue of the adverse parties.

The Settlement Agreement is also consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record. This policy supports many worthwhile goals, including reducing the expense of litigation,

conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. Here, the Settlement Agreement resolves the one scoped issue in dispute between ORA and SJWC, which avoids further litigation in this matter. No party to this proceeding protested the Settlement Agreement. Because the Six Mutuals did not protest The Settlement Agreement, we assume all issues it had with the rehearing of A.12-01-003 pursuant to D.15-03-048, have been resolved. Thus, we conclude the Settlement Agreement is reasonable.

3.5. Settlement Agreement is Consistent with Law

The Joint Parties believe that the terms of the Settlement Agreement comply with all applicable statutes. These include, e.g., Pub. Util. Code § 451, which requires that utility rates must be just and reasonable, and Pub. Util. Code § 454, which prevents a change in public utility rates unless the Commission finds such an increase justified. We agree that the required showings under Pub. Util. Code §§ 451 and 454 have been made. Further, nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

3.6. Settlement Agreement is in the Public Interest

The Settlement Agreement is in the public interest and in the interest of the Joint Parties' customers and constituents. The Settlement Agreement resolves the one scoped issue pursuant to D.15-03-048. As discussed in Section 3.1 above, since the Six Mutuals did not protest the Settlement Agreement, the Commission assumes all issues it had with the rehearing of A.12-01-003 pursuant to D.15-03-048 have been resolved. Thus, we conclude the Settlement Agreement is reasonable.

Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties. We

find that the evidentiary record of A.12-01-003 contains sufficient information for us to determine the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter. For these reasons, we approve the Settlement Agreement as proposed.

4. Other Procedural Matters

4.1. Change in Determination of Need for Hearings

In the Assigned Commissioner's Scoping Memo and Ruling on Rehearing issued June 19, 2015, the assigned Commissioner categorized the rehearing of one issue in A.12-01-003 as ratesetting, and preliminarily determined that hearings were necessary. Pursuant to the assigned ALJ's e-mail ruling issued on August 13, 2015, pursuant to a request from the Joint Parties, the EHs and briefing due dates were removed from the calendar. Given that no hearings were held in the current proceeding, we change our determination regarding hearings to no hearings necessary.

4.2. Confidentiality

Pursuant to Rule 11.4, D.06-06-066, and Pub. Util. Code § 583, SJWC requests leave to treat as confidential, the confidential version of Appendix A to its April 24, 2015 *Compliance Filing of San Jose Water Company Pursuant to Ordering Paragraph 2 of Decision 15-03-048* (Compliance Filing). SJWC states that Appendix A contains copies of contracts, which, if publicly available, would place SJWC and contracting parties at an unfair business disadvantage.

Rule 11.4 addresses confidentiality of filed documents; D.06-06-066 addresses our practices regarding confidential information, such as electric procurement data (that may be market sensitive) submitted to the Commission; and Pub. Util. Code § 583 addresses treatment of information as public or confidential. We do not consider D.06-06-066 in our assessment of confidentiality

herein, because the information being reviewed is related to a water utility, not an energy utility. We agree that the information contained in Appendix A, would put SJWC and contracting parties at a disadvantage. Therefore, pursuant to Rule 11.4 and Pub. Util. Code § 583, we grant SJWC's request to treat as confidential Appendix A to SJWC's Compliance Filing.

5. Waiver of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

6. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. On August 13, 2015, SJWC and ORA filed a Joint Motion, with the Settlement Agreement.
2. The Settlement Agreement resolves the one issue for rehearing in this proceeding.
3. The evidentiary record of A.12-01-003, including the Settlement Agreement, contains sufficient information for us to determine the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter.
4. Rule 12.1(d) provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest."

5. SJWC and ORA reached a Settlement Agreement after discovery, careful analysis of the issues, serving of testimony by SJWC and ORA, and substantial give-and-take between the parties which occurred during settlement conferences.

6. The settling parties comprise two of the three parties in this proceeding. The other party to this proceeding, the Six Mutuals, did not participate in the Settlement Conference.

7. No party responded to the Settlement Agreement.

8. In the Assigned Commissioner's Scoping Memo and Ruling on Rehearing, issued June 19, 2015, the assigned Commissioner categorized the rehearing of one issue in A.12-01-003 as ratesetting, and preliminarily determined that hearings were necessary.

9. Pursuant to the assigned ALJ's e-mail ruling issued on August 13, 2015, and pursuant to a request from the Joint Parties, the EHs and briefing due dates were removed from the calendar.

Conclusions of Law

1. The Joint Motion and Settlement Agreement proposed by SJWC and ORA should be adopted.

2. Adoption of the Settlement Agreement is in the public interest.

3. Adoption of the Settlement Agreement is reasonable in light of the record, is consistent with law, is in the public interest, and is in the interest of SJWC's customers.

4. The Settlement Agreement is consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.

5. The terms of the Settlement Agreement comply with all applicable statutes, and do not contravene statute or prior Commission decisions.

6. Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties.

7. SJWC's request treat Appendix A to its April 24, 2015 Compliance Filing as confidential should be granted.

8. Given that no hearings were held in the current proceeding, we change our determination regarding hearings to no hearings necessary.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between the Office of Ratepayer Advocates and San Jose Water Company on Issue Presented on Rehearing of Decision 14-08-006 is adopted.

2. San Jose Water Company's (SJWC) request to treat as confidential, the confidential version of Appendix A to its April 24, 2015 Compliance Filing of San Jose Water Company Pursuant to Ordering Paragraph 2 of Decision 15-03-048 is granted. The information shall remain sealed and confidential for a period of three years after the date of this order. During this three-year period, this information will remain under seal and confidential, and shall not be made accessible or disclosed to anyone other than the Commission staff or on further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Law and Motion Judge, the Chief ALJ, or the Assistant Chief ALJ, or as ordered by a court of competent jurisdiction. If SJWC believes that it is necessary for this information to remain under seal for longer than three years, SJWC may file a new motion stating the justification of further withholding of the information

from public inspection. This motion shall be filed at least 30 days before the expiration of this limited protective order.

3. Application 12-01-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.